

# RHODE ISLAND ETHICS COMMISSION



FY2005  
ANNUAL REPORT

# ANNUAL REPORT FISCAL YEAR 2005

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# I. INTRODUCTION TO THE COMMISSION

## A. INTRODUCTION

The Rhode Island Ethics Commission (Commission) is a constitutionally mandated body authorized to adopt, administer, and enforce the State of Rhode Island's Code of Ethics (Code). R.I. Const. art. III, § 8. The Code of Ethics is embodied in Rhode Island General Laws sections 36-14-4 to 36-14-7 and Commission Regulations 36-14-5001 to 36-14-7003, and sets forth standards of conduct for all of Rhode Island's public officials and employees.

The Commission educates and advises public officials and employees about the standards of conduct set out in the Code of Ethics. Advisory opinions respond to specific questions about the Code posed by officials or employees facing potential conflicts of interest. The education program offers seminars and workshops and disseminates publications about the Code of Ethics, its statutory and regulatory guidelines, and the procedures of the Ethics Commission.

The Commission enforces the Code of Ethics through a combination of confidential investigative proceedings, open hearings, and public adjudications. Enforcement powers include civil penalties and, in some instances, the power to remove an official from office.

All educational publications, advisory opinions, complaints, and final determinations of the Commission are available to the public. Investigative reports and related pleadings, and Commission orders become public at specific junctures in the enforcement process.

This Annual Report summarizes the activities of the Commission for state Fiscal Year (FY) 2005. Accordingly, this FY2005 Annual Report applies to the time period covering July 1, 2004 to June 30, 2005. Separate sections of the Annual Report describe FY2005 activities relating to regulatory and policy changes, declaratory rulings, advisory opinions, investigations and enforcement, litigation, financial disclosure, education, and public access.

## **B. HISTORY**

In 1976, the Rhode Island General Assembly enacted the State's first Code of Ethics and created the Conflict of Interest Commission. That Code governed the activities of state and municipal elected and appointed officials and required all such officials to meet newly imposed financial disclosure requirements. The Conflict of Interest Commission enforced the statute.

In November of 1986, Rhode Island voters adopted a constitutional amendment mandating that the General Assembly "establish an independent, non-partisan ethics commission . . . ." R.I. Const. art. III, § 8. In 1987, the General Assembly replaced the Conflict of Interest Commission with a fifteen-member Ethics Commission. In 1992, the Assembly reduced the size of the Ethics Commission to the current nine members.

The Rhode Island Constitution empowers the Ethics Commission to adopt and enforce a Code of Ethics, to investigate violations and to impose penalties, including removal from office. R.I. Const. art. III, § 8. Legislation enacted by the General Assembly grants the Ethics Commission additional powers to issue advisory opinions to public officials and employees and to offer educational programs. The statute also governs the process by which Commissioners are appointed, sets quorum requirements, and defines the administrative powers of the Commission. R.I. Gen. Laws §§ 36-14-1 to 36-14-21.

## **C. POWERS**

The fundamental powers of the Ethics Commission are to:

- Adopt a Code of Ethics
- Advise public officials and employees about the Code of Ethics
- Enforce the Code of Ethics
- Enforce financial disclosure and maintain financial disclosure records
- Educate public officials, government employees, and citizens

## **D. RHODE ISLAND CODE OF ETHICS IN GOVERNMENT**

The Rhode Island Constitution requires that public officials and employees "adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and not use their position for private gain or advantage." R.I. Const.

art. III, § 7. The Constitution also provides that all Rhode Island public officials and employees are subject to the Code of Ethics. This includes elected and appointed officials and employees at the state and local levels of government.

The Code of Ethics prohibits conflicts of interest. Public officials and employees may not have financial interests that are in substantial conflict with the proper discharge of their public duties. R.I. Gen. Laws § 36-14-5(a). Conflicts of interest include the financial interests of the public official or employee as well as those of his or her family, private employers, business associates, or any business the official or employee may represent. R.I. Gen. Laws § 36-14-7(a). When conflicts of interest arise, public officials and employees are required to disclose the nature of the conflict. R.I. Gen. Laws § 36-14-6. They are further required to recuse themselves from taking any official government action or participating in deliberations concerning a matter in which they have a conflict of interest.

The Code of Ethics includes statutory provisions enacted by the General Assembly and adopted by the Commission. R.I. Gen. Laws §§ 36-14-4 to 36-14-7. In addition, the Code of Ethics consists of regulatory provisions enacted solely by the Ethics Commission. Commission Regulations 36-14-5001 to 36-14-7003. There are also statutes and Commission regulations that set forth the Commission's procedures. Copies of the full Code are available from the Ethics Commission or may be downloaded from the Commission's website.

Furthermore, the Ethics Commission has regulatory authority relating to certain financial disclosure requirements for gambling interests, pursuant to R.I. Gen. Laws §§ 41-9-1 to 41-9-6, and has enforcement authority relating to goods or services provided to public officials and employees by state vendors, pursuant to R.I. Gen. Laws §§ 36-14.1-1 to 36-14.1-4. The Ethics Commission also works with the Board of Governors for Higher Education in the review of applications for exceptions to the Code made by state university inventors and researchers. R.I. Gen. Laws § 16-59-26.

## **E. THE COMMISSION**

The Commission is comprised of nine Rhode Island citizens. Four are appointed directly by the Governor; five are appointed by the Governor from lists of nominees submitted by the Majority and Minority Leaders and the Speaker of the State of Rhode Island House of Representatives, and the President and the Minority Leader of the State of Rhode Island Senate, respectively. No Commission member may serve more than one full five-year term. While serving

on the Ethics Commission, members are prohibited from holding or campaigning for public office, holding office in any political party or political committee, and participating in or contributing to any political campaign. Commissioners may neither directly nor indirectly attempt to influence any decision by a governmental body. R.I. Gen. Laws § 36-14-8.

Section 36-14-8(i) of the Rhode Island General Laws provides that Commission members shall receive one hundred dollars (\$100) per day as compensation for attendance at meetings of the Commission. For FY2005, however, the Commissioners received no compensation for their service because the General Assembly passes each year a public law suspending all such payments.

During FY2005, the Commission conducted nineteen (19) meetings. The members of the Ethics Commission during FY2005 were James Lynch, Sr., Chairperson, Patricia Moran, Vice Chairperson, Robin L. Main (served until replaced in 2004), Francis J. Flanagan (served until replaced in 2004), Richard E. Kirby, James V. Murray, George E. Weavill, Jr., Secretary, James C. Segovis, Ph.D., Frederick K. Butler, Barbara R. Binder (appointed in 2004), and Ross Cheit (appointed in 2004).

#### **F. COMMISSION MEMBERS**

**Barbara Binder**, was appointed by Governor Carcieri as a direct appointment in 2004. Her term expires in 2009. She was Chief of Staff for then-General Treasurer Nancy Mayer from 1993 to 1999. She was formerly the Deputy Chief Counsel for the Department of Business Regulation from 1986 to 1992. Prior to that, she was an attorney with the law firms of Winograd, Shine and Zacks, and Selya and Iannuccillo. She holds a J.D. from Boston University Law School, a M.S. from Columbia University, and a B.A. from Brandeis University.

**Frederick K. Butler**, was nominated by House Minority Leader Robert Watson and appointed by the Governor in 2004. His term expired in 2005. He was named Vice President Business Ethics and Corporate Secretary of Textron in January of 1999. He joined Textron in 1980 as a staff attorney for the corporate office. Prior to joining Textron, he was an associate at the New York law firm of Dewey, Ballantine, Bushby, Palmer, and Wood. He received his B.A. from Harvard University and his J.D. from Harvard Law School. He also participates in other civic and charitable organizations, including the Providence Foundation, St. Joseph Health Services of the Rhode Island, First Works Providence, and the Textron Chamber Academy.

**Ross Cheit**, was nominated by Senate Minority Leader Dennis Algiere and appointed by Governor Carcieri in 2004. His term expires in 2009. He graduated from Williams College in 1977 and subsequently received a law degree from the University of California, Berkeley. After clerking for a judge on the Oregon Supreme Court, he returned to the University of California, Berkeley for a doctorate in Public Policy. He has been affiliated with Brown University since 1986 and currently is an Associate Professor of Political Science and Public Policy. Professor Cheit was a Fellow in the Ethics and Professions Program at Harvard University in 1990-91. He was later a Faculty Fellow in Ethics and Public Administration Program at the University of Rhode Island. He is a resident of Barrington.

**Francis J. Flanagan**, was nominated by Senate Minority Leader Dennis Algiere and appointed by Governor Almond in 1999. His term expired in 2004. A resident of Middletown, he is a partner with the law firm of Sayer, Regan, Thayer & Flanagan of Newport, Rhode Island. He has a statewide litigation practice in which he represents clients pursuing personal injury claims, as well as clients in need of divorce and criminal defense representation. A former active duty Navy JAG, he now holds the rank of Lieutenant Commander, Judge Advocate General's Corps, United States Naval Reserve. He is also an adjunct professor at Salve Regina University and has taught Sexual Harassment Law at the Naval War College and Trial Advocacy as a staff member at the Naval Justice School. He earned degrees at St. Michael's College and Suffolk University Law School. He is an active member of St. Augustine's Church and the Ancient Order of Hibernianians.

**Richard E. Kirby**, was nominated by Speaker John Harwood and appointed by Governor Almond in 1998. His term expired in 2002. He was elected by the Commission to serve as Vice Chairperson from September 21, 1999, until he was elected Chairperson on September 25, 2001. He served as Chairperson until October 14, 2003. A resident of East Providence, he is engaged in the private practice of law with Macktaz, Keefer & Kirby. He earned degrees at the University of Rhode Island and the Catholic University of America, Columbus School of Law. He has served as law clerk to the Chief Justice of the Rhode Island Supreme Court and Legal Counsel to the Subcommittee on Financial Institutions, U.S. House of Representatives.

**James Lynch, Sr.**, was appointed by Governor Lincoln Almond in 1997, and in 2001, was reappointed to a full five-year term expiring in 2006. The Commission elected him Secretary on September 21, 1999, and he served in that position until



he was elected Chairperson on October 14, 2003. He is a resident of North Kingstown where he was an elected Moderator for one term and a member of the Tax Assessment Review Board for sixteen years, serving as its Chairperson the last four. He also has served on the State Board of Elections. He is a retired Army Lt. Colonel who obtained a bachelor's degree from the University of Nebraska under the Army's "Bootstrap Program." He obtained a M.B.A. from Bryant College after retirement and went to work first for Roadway Express as a Dock Foreman and then for the OMNI Biltmore Hotel as their Human Resources Director, retiring in 1988. He is also very active with the Prince Hall Masons and Shriners, once holding the highest office in the State of Rhode Island.

**Robin L. Main**, was appointed by Governor Lincoln Almond in 1999. Her term expired in 2004. She was elected Secretary by the Commission on October 14, 2003 and served in that position until November 9, 2004. She is a resident of Jamestown and a partner at the Providence office of the law firm, Holland & Knight. She is a 1989 graduate of Tulane Law School, cum laude, and a 1986 graduate of the University of New Hampshire, summa cum laude. Prior to joining McGovern Noel & Benik in 1992, she was an associate at Hinckley, Allen & Snyder in Providence. Her areas of practice are complex commercial litigation and environmental law. She is an active board member of the Providence Animal Rescue League.

**Patricia M. Moran**, was nominated by Senate Majority Leader William Irons and appointed by Governor Almond in 2001. Her term expires in 2006. A resident of North Providence, she is the Vice President for Finance for the Hospital Association of Rhode Island. She previously was employed as a project manager with Partners Healthcare System of Boston, a business analyst for Neighborhood Health Plan of Rhode Island, an independent consultant, and the Executive Director of the Conference of Boston Teaching Hospitals/Boston Organization of Teaching Hospital Financial Officers. In addition, she had served as Director of Financing Programs at the Massachusetts Health and Educational Facilities Authority, and as Executive Director of the Rhode Island Health and Educational Building Corporation. She also held various positions with the Rhode Island Departments of Education, Human Services, and Mental Health Retardation and Hospitals. She received both her undergraduate and Master of Business Administration degrees from Bryant University.

**James V. Murray**, was nominated by House Majority Leader Gerard Martineau and appointed by Governor Almond in 1998. His term expired in 2003. A resident of Warwick, he has served as Managing Attorney for Amica Mutual Insurance Co.

for the last thirteen years. Prior to joining Amica, he served as Managing Attorney to Cigna Corporation and Aetna Life & Casualty and as Senior Attorney for Travelers Insurance Company. He earned degrees at the Harvard University, a B.A. in Government, cum laude, and Suffolk Law School.

**James C. Segovis, Ph.D.**, was appointed by Governor Almond in 2002. His term expires in 2007. He is a resident of Smithfield and Executive-In-Residence in the Department of Management at Bryant University. He holds a B.A. from the State University of New York at Cortland, a M.B.A. from the Southern Methodist University's Cox School of Business, and a Ph.D. from the University of Texas at Dallas's School of Management. He has held positions with the U.S. Department of Treasury and the Federal Home Loan Bank System.

**George E. Weavill, Jr.**, elected Secretary on November 9, 2004, was appointed by Governor Lincoln Almond in 2001 to fill an unexpired term. His term expired in 2005. He is a resident of Lincoln and is Business Manager for the Rhode Island Conference of the United Church of Christ, a position he has held since 1996. He also chairs the organization's investment committee. He served as President of the Rhode Island State Council of Churches from 1990 to 1993, and is currently serving as its Treasurer. He served as a member of the Lincoln Planning Board for twenty-five years, was the panel's Vice Chairman from 1975 to 1999, and Chairman from 1999 to 2000. He retired in 1993 from his professional career of retail management with Sears, Roebuck & Company that spanned thirty-one years. He received an undergraduate degree in Management from Bryant College in 1962.

### **G. COMMISSION STAFF**

The staff of the Ethics Commission has responsibility for the daily operations of the agency. The Executive Director/Chief Prosecutor is the chief administrative officer, directs all investigative and enforcement activities, prosecutes complaints before the Commission, litigates matters before the Superior and Supreme Courts of Rhode Island, and coordinates policy decisions of the Commission. The Education Coordinator designs, develops, and directs all educational programs, including seminars and publications, acts as a liaison to the public and the media, and coordinates the Commission's advisory opinion and public access programs. The Staff Attorneys oversee investigative matters, conduct prosecutions, represent the Commission in court litigation, and draft legal recommendations for the Commission regarding advisory opinions, legislation, and policy matters. The Investigators investigate complaints filed by private parties and by the

Commission, oversee preliminary investigations, and process and review non-complaint information received by and/or referred to the Commission. The Office Manager and ancillary staff maintain all financial disclosure and complaint records and provide administrative support to all Commission programs and activities. Considerable staff time is devoted to creating and maintaining accessible records for public inspection. The staff respond to hundreds of requests for information and access to Commission records.

In FY2005, the Commission's staff was as follows:

Executive Director/Chief Prosecutor .....	Kent A. Willever
Senior Staff Attorney .....	Katherine D'Arezzo
Education Coordinator/Staff Attorney .....	Jason Gramitt
Staff Attorney (II) .....	Dianne L. Leyden (as of 1/2/05)
Staff Attorney (I) .....	Macall S. Robertson (as of 1/23/05)
Chief of Investigations .....	Steven T. Cross
Deputy Chief Investigator .....	Peter J. Mancini
Investigator .....	Michael S. Douglas (as of 12/26/04)
Office Manager .....	Patricia F. Barker
Administrative/IT Officer .....	Michelle R. Lee
Administrative Assistant .....	Tracy Teixeira
Research Aide .....	Lisa A. Petrone (as of 12/12/04)

## **H. LEGAL COUNSEL**

The services of the Legal Counsel are retained independent of the Executive Director or other Commission employees. The Legal Counsel responds to questions of law posed by the Commission members and advises the Commission regarding Advisory Opinions and all other legal matters. The Commission's Legal Counsel is Kathleen Managhan.

## **I. BUDGET**

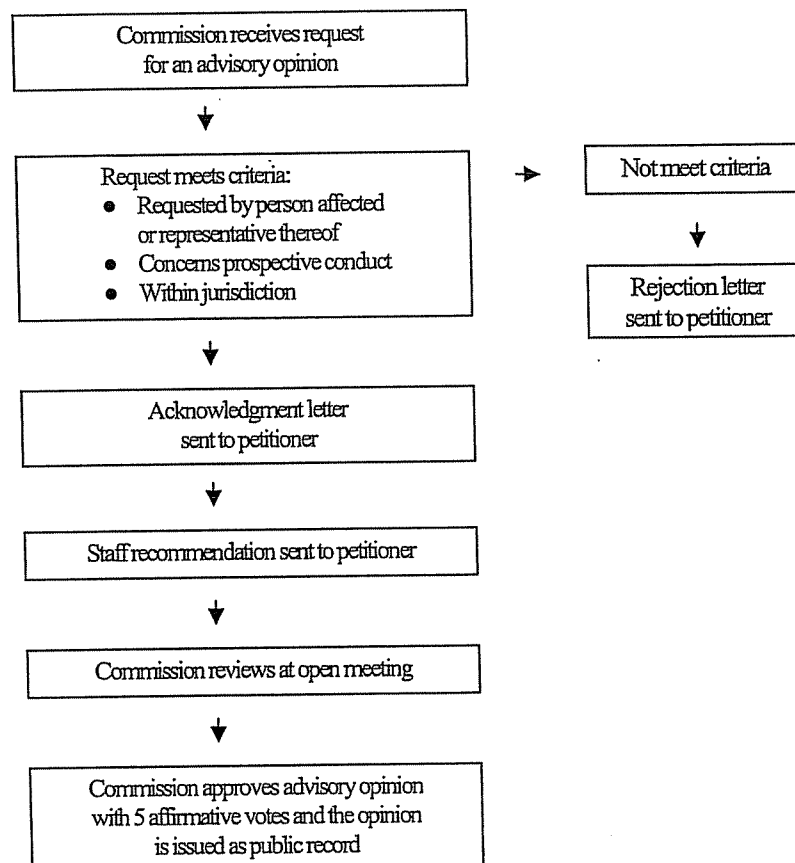
The Commission's expenditures for FY2005 totaled \$958,758. This reflects an increase of \$108,040 from FY2004, which is attributable to the increase in personnel this fiscal year.

## II. ADVISORY OPINIONS

### A. INTRODUCTION

Rhode Island General Laws § 36-14-11 authorizes the Ethics Commission to issue advisory opinions to public officials and employees, both at the state and municipal levels. Any public official or employee may request or petition that the Commission interpret the Code of Ethics and recommend specific actions in keeping with the requirements of the Code. Advisory opinions require an affirmative vote of five of the nine members of the Commission. Requests for advisory opinions must be in writing and include the petitioner's position, the jurisdiction and powers of the department, agency, or public body he or she serves, and the nature of the potential conflict or other inquiry. Opinions are issued in open session and are public records.

#### Advisory Opinion Process Flowchart

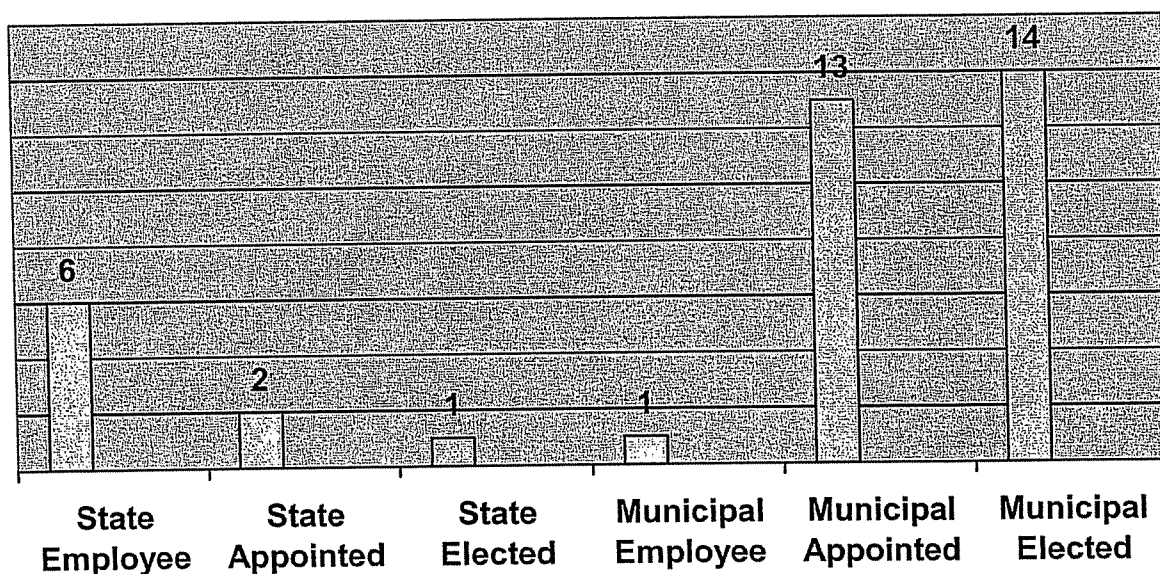


## **B. ADVISORY OPINIONS ISSUED IN FY2005**

Thirty-seven (37) advisory opinions were issued in FY2005. This represents a decrease in opinions issued from past fiscal years. This decrease was due to several factors, the most significant of which were the staff vacancies during the first half of FY2005 in the positions responsible for drafting the opinions. During this fiscal year, these positions were filled and training was completed. By the end of the fiscal year, the entire backlog of advisory opinion requests was eliminated. The overall decrease in the number of requests is also attributable to an increase in staff availability to handle questions about the Code of Ethics outside of the advisory opinion process by providing informal guidance and information over the telephone, by personal appointment or walk-in meetings, and increased media publication and educational seminars.

In FY2005, six (6) of the advisory opinion requests issued came from state employees, two (2) came from state appointed officials, one (1) from state elected officials, one (1) from municipal employees, thirteen (13) from municipal appointed officials, and fourteen (14) from municipal elected officials. The chart below shows the distribution of advisory opinions issued in FY2005 for the aforementioned six groups.

**Distribution of Advisory Opinions Issued by Position**



Most frequently, the advice sought in FY2005 related to potential conflicts arising from an official or employee obtaining private employment. The following is a list of keyword topics addressed by advisory opinions issued in FY2005. Because

requests often raise multiple issues, the number of topics addressed in advisory opinions exceeds the total number of opinions.

### **Advisory Opinion Keyword Index**

#### **A**

Acting as Agent (2)  
Appointing Authority (4)

#### **B**

Budgets (3)  
Business Associate (4)

#### **C**

Class Exception (6)  
Competitor(s) (2)  
Contracts (1)

#### **D-E**

Dual Public Roles (2)

#### **F-H**

Family: Private Employer/ment (1)  
Family: Public Employment (6)  
Family: Supervision (1)  
Financial Interest (1)  
Hardship Exception (3)

#### **IJKL**

Licensing (2)  
Lobbying (2)

#### **M**

Memberships (1)

#### **N-O**

Nepotism (3)

#### **P-Q**

Political Activity (1)  
Private Employment (9)  
Property Interest (4)  
Public Forum Exception (1)

#### **R-Z**

Recusal (3)  
Revolving Door (6)

### **C. TELEPHONE INQUIRIES**

In FY2005, the Commission continued its efforts to respond to telephone inquiries from government officials, public employees, and from the public at large. Through rotating staff assignments, questions about the Code or Commission procedures are answered without delay. While not offering legal advice, the staff provides information, copies of past advisory opinions, and educational publications in response to several hundred calls during the fiscal year. Roughly half of the calls came from private citizens and the media with the remainder made up of public officials and employees. While a majority of the calls were questions about advisory opinions or complaints or requests for information, other matters included questions about financial disclosure, recusal, whether a particular matter fell within the Commission's jurisdiction, gifts, dual public roles, revolving door, and private employment.

### **D. GENERAL COMMISSION ADVISORIES**

The Ethics Commission also issues General Commission Advisories (G.C.A.). These advisories offer broad interpretations of the Code of Ethics relevant to all persons holding a given public office, or pertaining to commonly faced conflicts of interest. To date, the Commission has issued thirteen such advisories. The Commission has withdrawn several General Commission Advisories. The topics of these advisories are listed as follows by year of issuance:

<b>NUMBER</b>	<b>TOPIC</b>	<b>YEAR</b>
G.C.A. No. 1	Nepotism	1988
G.C.A. No. 2	Filing Requirements of Financial Disclosure Statements for Law Firms Acting As City And Town Solicitors	1988
G.C.A. No. 3	City or Town Solicitors Representing Individuals Charged with Ethics Code Violations	1988
G.C.A. No. 4	Counsel for State Boards, Commissions, or Agencies Representing Individual Members Charged with Ethics Code Violations	1988
G.C.A. No. 5	Guidelines for Public Officials and Employees Pertaining to Complimentary Meals ( <i>Withdrawn</i> )	1988
G.C.A. No. 6	Salary Raises for Public Officials	1989
G.C.A. No. 7	Free Passes ( <i>Withdrawn</i> )	1989

NUMBER	TOPIC	YEAR
G.C.A. No. 8	Architect Members of State and Local Historic Preservation Commissions Appearing Before Their Respective Agencies	1989
G.C.A. No. 9	Police Chiefs Serving as Member of Collective Bargaining Units Representing Uniformed Officers ( <i>Withdrawn</i> )	1989
G.C.A. No. 10	Regarding RISDIC	1990
G.C.A. No. 11	Activities of a State or Municipal Official in Connection with Decisions Concerning His or Her Property, or the Property of Certain Relatives	1991
G.C.A. No. 12	Regarding Vendor Paid Travel ( <i>Withdrawn</i> )	1991
G.C.A. No. 13	Legislators and Their Related Financial Interests	1992

#### **E. PUBLIC ACCESS**

All General Commission Advisories and individual advisory opinions are public records and are issued by the Commission in open session. The Commission has published Advisory Opinion Digests with indices for simple reference and research. The full text of the Commission's Advisory Opinions are available on the internet for the General Commission Advisories still in effect and for individual advisories issued in 1995 through the present. The Commission's web address is <http://www.ethics.ri.gov>.



### **III. COMPUTERS AND TECHNOLOGY**

#### **A. INTRODUCTION**

The Ethics Commission has responsibilities for ethics regulation as well as for programs in financial disclosure, investigation and enforcement, and ethics education. Given the breadth and overlapping of these responsibilities and associated information, the Commission has implemented an integrated approach for handling data so as to improve the Commission's productivity and efficiency, as well as the public's access to information.

In FY2005, the Commission's computer operating systems and programs were upgraded. As a result, the memory of central processing units was improved and those units that could not be upgraded were replaced to accommodate the new software. Additionally, in FY2005, minor testing was conducted on the newly constructed database system that was implemented to integrate all Commission data into a single, in-house database, which would be more compatible with new technology and with public access via the internet. After this testing, the Commission staff determined that this database system would require major changes. Efforts by the Commission staff to implement these changes were temporarily suspended due to personnel changes at both the Commission and the Department of Information Technology.

#### **B. PUBLIC ACCESS**

The Commission maintains a web site that is available to the public twenty-four hours a day. Among other things, the web site contains searchable, viewable, and printable copies of all General Commission Advisories, individual advisory opinions from 1995 to present, the entire Code of Ethics in Government, Commission meeting schedules, agendas and minutes, Decisions and Orders, educational publications, and downloadable forms. The Commission's web address is <http://www.ethics.ri.gov>.

## **IV. DECLARATORY RULINGS**

### **A. INTRODUCTION**

The Ethics Commission, under Commission Regulation 36-14-1025, accepts petitions from any interested person seeking a “declaratory ruling” clarifying the applicability of the Code of Ethics. Such rulings have the same status as Commission orders in contested cases and may be challenged in Superior Court.

All declaratory rulings are public records. Declaratory rulings are issued in open session following public hearing. Notices of all hearings and open meetings are posted and the public may attend.

### **B. DECLARATORY RULINGS REQUESTED IN FY2005**

The Commission received no requests for declaratory rulings in FY2005.

## **V. EDUCATION**

### **A. INTRODUCTION**

The statutory provisions of the Rhode Island Code of Ethics authorize the Ethics Commission to establish an education program. R.I. Gen. Laws §§ 36-14-9(a)(14)-(15), and § 36-14-10. The program's purpose is to educate public officials, public employees, and all Rhode Islanders regarding the Code of Ethics and Commission procedures. The program includes seminars and workshops as well as the production and dissemination of brochures and other publications explaining the Code of Ethics. Members of the Commission staff outreach to public officials and employees at all levels of government through this program by crafting the objectives and content of individual seminars and workshops to most meet the specific needs of an agency or department. Seminars and workshops incorporate topics under the Code of Ethics that frequently arise in the advisory opinion or complaint contexts. The seminars and workshops are also provided in a presentation or interactive format, and are of varying duration depending on the needs and goals of the agency or department. Commission publications are provided during these presentations and are available at the Commission offices.

The seminar program is designed to be easily tailored to the unique governmental roles and responsibilities of its participants. Each program is built around a core curriculum. In addition, the governing statutes, policies, and procedures of the sponsoring agency and the job descriptions, powers, and duties of the participants are taken into account so as to focus the discussion on the most relevant sections of the Code of Ethics. The staff attempts to enrich the program with real-world examples of Code applications. Whenever possible, seminars are provided at the worksites or meeting places of the participants. Most programs are provided at no cost to the sponsoring agency (occasionally agencies are asked to assist the Ethics Commission with the costs of duplicating handouts used in the program).

### **B. EDUCATIONAL WORKSHOPS PROVIDED IN FY2005**

In FY2005, the Ethics Commission provided 35 separate educational workshops and seminars to over 1,600 persons across the State. The majority of these were presented by the Commission's Education Coordinator, although in some instances educational presentations are made by the Executive Director, other staff attorneys,

or Commission investigators. For example, in June of 2005 the Executive Director moderated a panel of experts, including the Commission's Education Coordinator, in discussion of the Commission's adjudicatory functions and procedures for the Annual Meeting of the Rhode Island Bar Association.

For the third consecutive year the Ethics Commission was a featured part of the Attorney General's Open Government Summit at the Roger Williams University School of Law. The Education Program also reached out to several professional organizations having large numbers of members who are public officials across Rhode Island, providing ethics training targeted to each organization's membership. These included the Rhode Island Accountants and Auditors Institute, the National Association of State Contractors Licensing Agencies, the Society of Governmental Accountants and Auditors, and the Government Lawyers Committee of the Rhode Island Bar Association. The Education Coordinator led a discussion on ethics before the Aquidneck Island Planning Commission, an organization made up of the council members, planning and zoning boards, and historic district commissions of the municipalities of Newport County.

Aside from these large, group presentations, the Executive Director and Education Coordinator met individually with several department heads to discuss application of the Code of Ethics to particular departments and agencies. These departments included the Department of Corrections, Department of Environmental Management, Department of Health, and Department of Labor and Training.

In addition to the above educational outreach, the Commission staff has implemented a "duty call" system to provide information and answers to persons subject to the Code of Ethics and to members of the public. Each business day a Commission staff attorney or investigator is assigned as duty person to answer questions from the public that come through our telephones or from visitors to our offices. In the course of the fiscal year, it is estimated that the Commission staff takes over 1,000 such calls and meets personally with over 100 drop-in visitors.

### **C. EDUCATIONAL PUBLICATIONS**

As part of its educational mission, in FY2005 the Commission made several informative publications available to the public. These publications assist the public as well as those subject to the Code of Ethics in their efforts to understand and abide by its provisions. The brochures and volumes currently available include the following:

*A Guide to the Code of Ethics*  
*Advisory Digest - Building Officials*  
*Advisory Digest - DEM opinions*  
*Advisory Digest - Fire Districts*  
*Advisory Digest - Housing Authority*  
*Advisory Digest - Legislators*  
*Advisory Digest - Public Safety Officers*  
*Advisory Digest - School Committees*  
*Advisory Digest - State Employees*  
*Advisory Digest - Tax Assessors & Collectors*  
*Advisory Digest - Town Councils*  
*Advisory Digests*  
*Annual Reports*  
*Code of Ethics*  
*Code of Ethics: Selected Provisions*  
*Code of Ethics Relating to Lobbyists*  
*Complaints, Investigations and Enforcement*  
*Ethics Today Newsletter*  
*Financial Disclosure Requirements*  
*General Commission Advisories*  
*How to Get an Advisory Opinion*  
*How to Recuse*  
*New Gift Limits*

## **VI. FINANCIAL DISCLOSURE**

### **A. INTRODUCTION**

The Ethics Commission is empowered by the Rhode Island Constitution to adopt provisions to the Code of Ethics governing financial disclosure by public officials. R.I. Const. art. III, § 8. By statute, financial disclosure is required of all elected officials, all candidates for public office, and all persons appointed to serve as an officer or member of any state or municipal agencies that has substantive decision-making responsibilities. R.I. Gen. Laws §§ 36-14-16, 36-14-17. As of this fiscal year, state employees who hold a major decision-making position in a state agency are also required to file a yearly financial disclosure statement. R.I. Gen. Laws § 36-14-16(a)(3).

Financial disclosure statements must be filed annually. Officials are required to disclose sources of income and assets, including those of a spouse and any dependent children. Officials also must disclose whether they, a spouse, or dependent child hold interest in any business regulated by Rhode Island government or in any enterprise which engages in business transactions with the government. Finally, officials must disclose the name and address of any person, business, or organization which is owed more than one thousand dollars (\$1,000) by the official, a spouse, or a dependent child. Officials are not required to disclose the dollar amount of any income, asset, or debt.

The purpose of requiring financial disclosure is to help ensure that those people who are acting in the public interest do not use their public positions to further their private financial interests. The financial disclosure statement also provides evidence that there are no conflicts between the official's financial interests and his or her public office.

### **B. FINANCIAL DISCLOSURE PROCESS**

This fiscal year, the staff of the Ethics Commission processed financial disclosure statements for more than four thousand (4,000) officials. Computer databases are used to create and maintain lists of officials subject to the disclosure requirements. Throughout the year, staff update computer databases as elections are held,

appointments are made, terms end, officials resign, new positions are created, and former agencies and commissions are disbanded.

The Commission staff obtains lists of elected and appointed officials from city and town clerks, fire districts, and the leaders of state departments and agencies. Financial disclosure forms and instructions are mailed to new appointees and candidates as soon as the Commission receives official written notice of their appointment or eligibility. Thereafter, forms and instructions are mailed on an annual basis to persons subject to filing requirements.

### **C. FINANCIAL DISCLOSURE IN FY2005**

The 2004 Yearly Financial Disclosure Statements, covering calendar year 2004, were required to be filed during FY2005. These statements were due on or before the last Friday in April of 2005, or, were due within thirty days of an appointment to a public position or of the filing deadline for declaration as a candidate in an election. In FY2005, 3,608 of the 4,042 individuals required to file a 2004 Yearly Financial Statement did so by the end of the fiscal year. The compliance rate for filing the 2004 Financial Disclosure Statements was approximately 89%. This rate is higher than anticipated given that this was the first fiscal year that the Commission staff implemented Public Law 2004, ch. 389, § 1, which became effective on July 5, 2004, amending who must file yearly financial disclosure statements.

As a result of this law, the overall number of individuals required to file significantly decreased in this fiscal year as compared to past years. The new law did not change the filing requirement applicable to elected officials, whether on the state or municipal level. Rather, the law limited the category of municipal appointed officials required to file and added a category of state officials and employees who must file. As to municipal appointed officials, the amendment limited the filing requirement to those officials with decision-making authority over \$50,000 in public funds in any fiscal or calendar year. In order to simplify this determination, the amendment expressly enumerated many of these decision-making positions such as solicitors, assistant solicitors, police and fire chiefs, superintendents, members of planning boards, zoning boards, licensing boards, and tax appeal boards. As to state officials and employees, the filing requirement was expanded to include persons serving in "major decision-making positions" such as the executive or administrative head of a state agency.

To implement these changes in FY2005, the Commission staff spent considerable time and effort identifying public officials and employees needing to be added or removed from the roles of required filers. The Commission staff contacted city and town clerks as well as the head of each state agency to notify them of the law change and worked with them to determine which officials were required to file under the new law. To accommodate these new requirements, the staff also made changes to the language of the 2004 Financial Disclosure Statement form and its accompanying Instruction Sheet.

This fiscal year, the Commission staff continued to dedicate significant attention and resources to implementing the procedures and guidelines instituted in previous fiscal years aimed at encouraging compliance with the financial disclosure laws. The procedures and guidelines developed and instituted as part of a new program to enhance compliance, named "Operation Compliance" by the Commission's Executive Director, were applied again this fiscal year and resulted in higher than anticipated compliance rates. It is the goal of the Commission to improve financial disclosure compliance each year until a rate of 100% is achieved.

#### **D. PUBLIC ACCESS**

All financial disclosure statements are public records and may be reviewed during regular business hours. The Commission maintains records at its offices for up to five years. Records dating back beyond five years are held at an off-site storage facility. Copies of any financial disclosure record may be obtained at a cost of \$0.15 per page.



## **VII. INVESTIGATIONS AND ENFORCEMENT**

### **A. INTRODUCTION**

The Ethics Commission is empowered by constitutional and statutory provisions to enforce the Code of Ethics. R.I. Const. art. III, § 8; R.I. Gen. Laws §§ 36-14-12, 36-14-13, and 36-14-14. The Commission's enforcement powers include accepting or initiating complaints alleging Code violations, investigative authority, adjudicative authority, and the power to impose civil penalties.

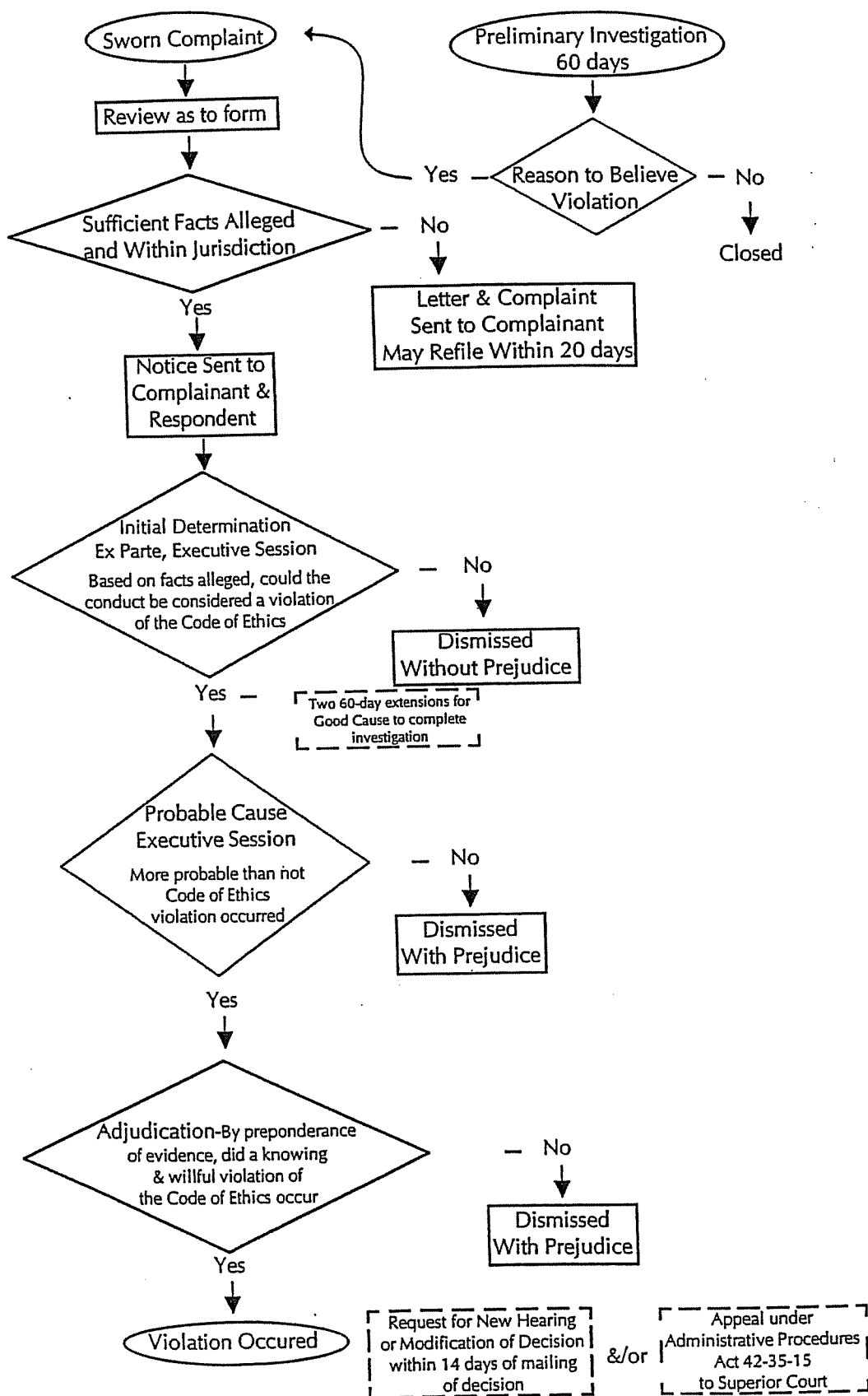
Any person may submit a sworn complaint. Public officials and employees who are alleged to have violated the Code receive notice of the filing of any complaint against them. At the first stage of formal review, initial determination, the Commission meets in executive session to determine whether a complaint alleges facts sufficient to constitute a knowing and willful violation of the Code. A complaint that is found to allege a Code violation is then investigated by the Commission's staff. At the second stage of review, the Commission conducts a probable cause hearing in executive session. If probable cause is found to believe the Code has been violated, the Commission conducts an adjudicative hearing in open session.

Persons found to have violated the Code of Ethics are subject to civil penalties. A fine of up to twenty five thousand (\$25,000) dollars may be imposed for each violation. Officials who are not subject to impeachment may be removed from office by the Commission. All Commission rulings and orders are subject to appeal to the Superior Court of the State of Rhode Island.

### **B. PRELIMINARY INVESTIGATIONS**

Preliminary investigations are undertaken when the Commission receives information, other than through a formal complaint, which indicates a possible Code violation. Under formal policies and procedures governing preliminary investigations, the Commission's Executive Director is required to notify the Commission whenever such an investigation is initiated and all materials relating to the investigation remain confidential unless and until a formal Commission complaint is filed. The person who is the subject of a preliminary investigation receives notification within sixty (60) days of its initiation.

# Investigative Process Flowchart



### **C. INVESTIGATIONS**

Full investigations are undertaken following the initial determination review, and must be completed, along with a probable cause hearing by the Commission, within one hundred eighty (180) days of the receipt of the complaint. The Commission may grant up to two sixty (60) day extensions for good cause shown. The Commission may issue subpoenas to compel witnesses to attend interviews and to produce documents. At the close of the investigation, an investigative report is prepared.

### **D. COMPLAINTS, ENFORCEMENT ACTIONS, AND PENDING COMPLAINTS**

As FY2005 began, 24 complaints alleging violations of the provisions of the Code of Ethics were pending. During FY2005, an additional 41 complaints alleging violations of provisions of the Code of Ethics were filed. The Commission issued 42 final orders during FY2005. Of these cases, 31 were settled with a finding of violation and imposition of a civil penalty (totaling \$17,100), 3 were adjudicated with the Commission imposing a civil penalty (totaling \$11,500), 3 were dismissed at initial determination, and 5 were dismissed at probable cause. At the close of the fiscal year, 23 complaints were pending.

### **E. PUBLIC ACCESS**

All complaints are public records from the date of filing. Investigative reports are confidential until a complaint is dismissed or a finding of probable cause is issued. All pleadings and Commission orders relating to the investigative phase become public after the probable cause hearing. All pleadings and Commission orders filed after the probable cause hearing are immediately public. Initial determination reviews and probable cause hearings are held in executive session. Adjudicative hearings are open to the public.

## VIII. LITIGATION

### A. INTRODUCTION

All final orders of the Ethics Commission in contested cases may be appealed to the Rhode Island Superior Court. Parties also may petition the Rhode Island Supreme Court for review. The Commission may initiate District Court actions to collect unpaid fines and may initiate Superior Court actions where judicial intervention is necessary to enforce the orders of the Ethics Commission.

### B. LITIGATION RESOLVED IN FY2005

During FY2005, the following litigation was resolved involving the Commission:

**In re: John Celona, PC04-3197.** During the investigation of an ethics complaint pending against John Celona, Complaint No. 2003-9, a subpoena was served upon a witness to provide documents and testimony. That witness filed a motion with the Commission to quash the subpoena on the grounds of attorney-client privilege. Upon the Commission's denial of the motion, in June of 2004 the witness sought a protective order from the Rhode Island Superior Court. After briefing and argument before a Justice of the Superior Court, in July of 2004 the witness was ordered to comply with the subpoena and sit for deposition. No appeal was taken, and the deposition proceeded.

### C. LITIGATION PENDING IN FY2005

During FY2005, the following litigation was pending involving the Commission:

**John Karlsson v. Melvin Zurier, Superior Court No. 00-5014.** The Plaintiffs, Complainants in the case of In re: Peter Atwood, Complaint No. 2000-1, seek the Rhode Island Superior Court's review of the Commission's dismissal of the Complaint in August of 2000. The Commission filed its Answer on October 16, 2000. Plaintiffs have taken no further action.

**Ronald L'Heureux v. Martin Healey, Superior Court No. 99-5849.** An ACI inmate filed a complaint seeking review of the Executive Director's rejection of his purported Complaint for failure to allege a violation of the Code of Ethics. The

Complaint was timely answered. Since the filing of some preliminary motions in 2000, the Plaintiff has taken no further action.

**Francis Pellegrino v. Rhode Island Ethics Commission, 788 A.2d 1119 (R.I. 2002).** Superior Court C.A. No. 98-4579 (September 22, 2004). Former members of the Ethics Commission filed a complaint against the Commission and the Treasurer on September 9, 1998, alleging that the State failed to pay them \$100.00 for each meeting they attended between January 1, 1992 and July 9, 1992. The Rhode Island Superior Court granted the State's motion to dismiss, finding that the doctrine of sovereign immunity barred the suit, and the Plaintiffs appealed. The Rhode Island Supreme Court held that the State waived what sovereign immunity it otherwise possessed in this case and remanded the action to the Rhode Island Superior Court, with instructions to stay further proceedings and return the case to the Commission to declare how much compensation is owed to each Plaintiff. In June of 2002, the Commission issued individual orders declaring the number of meetings attended by, and the statutory amount of compensation due to, the eleven former Commissioners. In January of 2004, counsel to the former Commissioners filed a Motion to Enter Final Judgment on Remand from the Rhode Island Supreme Court. Counsel also filed a Motion for an Award of Attorneys Fees. The Department of Attorney General entered an appearance for the Commission.

At hearings conducted during FY2005, the Superior Court denied the Plaintiffs' motions for prejudgment interest and attorney's fees. In a written decision filed September 22, 2004, the Superior Court held that the Plaintiffs were not entitled to an award of attorneys' fees given that the complaint failed to assert any violation of civil rights laws for which attorneys' fees could be awarded under 42 U.S.C. § 1988(b), the complaint did not constitute an adjudicatory proceeding pursuant to the Equal Access to Justice Act, G.L. 1956 § 42-92-1, and the complaint did not assert a claim pursuant to § 42-112-2 of the Rhode Island Civil Rights Act of 1990. The Court also found that the Plaintiffs were not entitled to attorneys' fees under G.L. 1956 § 9-1-45, since the Commission's invocation of a sovereign immunity defense did not represent a complete absence of a justiciable issue. For similar reasons, the Court likewise rejected the Plaintiffs' argument that they were entitled to attorneys' fees pursuant to § 9-29-21. On October 1, 2004, Final Judgment entered in favor of the Plaintiffs in the total amount of \$41,700.

#### **D. LITIGATION COMMENCED IN FY2005**

No litigation matters involving the Commission were commenced in FY2005.

## **IX. PUBLIC ACCESS**

### **A. INTRODUCTION**

The Rhode Island Ethics Commission is a public agency, subject to the requirements of the Open Meeting Law, R.I. Gen. Laws §§ 42-46-1 to 42-46-14, the Access to Public Records Law, R.I. Gen. Laws §§ 38-2-1 to 38-2-15, the Administrative Procedures Act, R.I. Gen. Laws §§ 42-35-1 to 42-35-18, and the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213.

The offices of the Commission are open from 8:30 a.m. to 4:30 p.m. Monday through Friday, except on state holidays. All persons are welcome to inspect public records during regular business hours. Copies may be obtained in person, or by calling the Commission at 222-3790 (voice/TT), or via Rhode Island Relay, a telecommunications service for persons with hearing or speech disabilities, at 1-800-RI5-5555. A fee of \$0.15 per page may be charged for copies.

### **B. OPEN MEETINGS**

The Ethics Commission holds open meetings to consider advisory opinion requests, issue declaratory rulings, conduct adjudicative hearings, accept public comment on proposed regulations, and hear staff and committee reports. Initial determination reviews and probable cause hearings are conducted in executive session. Notices of all meetings are posted at the State House, Commission offices, and on the websites of the Commission and the Office of the Rhode Island Secretary of State. The public is welcome to attend all open meetings.

### **C. RECORDS**

The minutes of open Commission meetings, advisory opinions, financial disclosure statements, and complaints are all public records. The public complaint files include, in addition to the actual complaint, any written answer filed by the respondent, all orders issued by the Commission, notices of meetings and hearings, any motions filed, and a docket of Commission actions. Once a complaint is dismissed or a finding of probable cause is issued, the public files also contain the investigative report and related materials. Advisory opinions issued from 1995 to

present are available on the Ethics Commission web page, as are Decisions and Orders of complaint matters adjudicated or settled after 1991, and open session minutes.

#### **D. FORMS**

All forms of the Rhode Island Ethics Commission are available at the Commission's office. Additionally, recusal forms may be downloaded from the Commission's web page.

#### **E. EDUCATIONAL MATERIALS**

All educational materials are available to the public. Materials include the Code of Ethics, summaries of advisory opinions, brochures explaining Commission procedures, and Annual Reports. Much of this material is also available on the Commission's web page.

#### **F. ACCESS FOR PERSONS WITH DISABILITIES**

The Ethics Commission has a strong commitment to ensuring and improving access for persons with disabilities. Reasonable accommodations are made to afford public officials and the public with access to the Commission's meetings and documents. Any person requesting a reasonable accommodation because of a disability may contact the Commission's A.D.A. coordinator by calling the Commission during regular business hours or writing to its office address.

#### **G. WEB PAGE**

The Commission maintains a home page on the internet at the following address: <http://www.ethics.ri.gov>. It contains basic information about the Commission's history and powers, its members, the Code of Ethics, advisory opinions, education, investigations, and financial disclosure. It also includes the text of advisory opinions issued by the Commission from 1995 to the present, decisions and orders in complaint matters since 1991, and publications, including Commission newsletters and forms. A search page allows users to search the entire web site, advisory opinions, complaint matters, or the Code of Ethics. Finally, the site provides a direct link to the Commission's e-mail.

## **X. STATUTORY, REGULATORY, AND POLICY CHANGES**

### **A. INTRODUCTION**

The Rhode Island Constitution empowers the Commission to “adopt a code of ethics.” R.I. Const. art. III, § 8. Statutory provisions authorize the Commission to prescribe and publish, after notice and public hearings, rules and regulations to carry out the provisions of R.I. Gen. Laws §§ 36-14-1 to 36-14-21. The Commission's authority to enact a code of ethics is concurrent with that of the General Assembly. Accordingly, changes in the Code may come from either body.

### **B. PUBLIC ACCESS**

The Commission publishes the Code of Ethics and Procedural Regulations, and also makes them available on its website. Revisions to the Code of Ethics and other regulatory matters are subject to the provisions of the Administrative Procedures Act, including the requirements for notice and public hearings.

### **C. NEW CODE PROVISIONS: FY2005**

During FY2005, the Commission and its staff continued to review the Code of Ethics and the Commission's procedures in an effort to identify areas that might be improved through amendment, repeal, or further regulation. This fiscal year the Commission amended the following two provisions of the Code of Ethics through the regulatory process:

**Regulation 36-14-5009 Prohibited Activities – Gifts.** In FY2005, pursuant to the Commission's constitutional authority to adopt a Code of Ethics, and in compliance with Administrative Procedures Act, R.I. Gen. Laws § 42-35-1, et seq., the Commission amended Regulation 5009 to substantially reduce the value of gifts that public officials and employees may accept from anyone who has an interest in a decision that the official or employee is authorized to make.

The amendment replaced the existing gift regulation in its entirety. The new regulation went into effect on April 12, 2005 and prohibits the acceptance of a single gift having a fair market value or actual cost greater than \$25 and the



acceptance of gifts in one calendar year having an aggregate fair market value or aggregate actual cost greater than \$75. The previous gift regulation prohibited the acceptance of a single gift having a value greater than \$150 and the acceptance of gifts having an aggregate value of \$450 in any calendar year. The gift reporting requirement no longer applies to gifts received on or after the effective date of the new gift regulation; however, gifts received prior to the effective date remain subject to the reporting requirement and person receiving said gifts were required to file a gift disclosure form in January of 2006 covering gifts received from January 1, 2005 through April 11, 2005.

**Regulation 1023 – Procedure for Complaints Relating to Financial Disclosure.**

In FY2005, pursuant to the Commission's constitutional authority to adopt a Code of Ethics, and in compliance with Administrative Procedures Act, R.I. Gen. Laws § 42-35-1, et seq., the Commission amended Regulation 1023 to correct citations contained therein to other provisions of the Code of Ethics. The amendment made no substantive changes to the Code of Ethics.

Additionally in FY2005, the following public law went into effect regarding financial disclosure:

**P.L. 2004, ch. 389, § 1.** This Act, which substantially alters the determination of who must file yearly financial disclosure statements, became effective on July 5, 2005 without the Governor's signature. It was originally introduced in the Senate by Senate Majority Leader Paiva-Weed and Senators Goodwin, McCaffrey, Gallo and Perry. The Act amended R.I. Gen. Laws §§ 36-14-2 and 36-14-16. Prior to the amendment, all state and municipal elected officials and most state and municipal appointed officials were required to file the financial disclosure statements. The amendment made no change to the requirement as to elected officials, whether on the state or municipal level. As to municipal appointed officials, the amendment limited the filing requirement to those officials with decision-making authority over \$50,000 in public funds in any fiscal or calendar year. In order to simplify this determination, the amendment expressly enumerated many of these decision-making positions such as solicitors, assistant solicitors, police and fire chiefs, superintendents, members of planning boards, zoning boards, licensing boards, and tax appeal boards. As to state officials, the filing requirement was expanded to include persons, including employees, serving in "major decision-making positions" such as the executive or administrative head of a state agency.

The Commission worked diligently during FY2005 to implement these changes. Aside from necessary changes to the financial disclosure form language, the Commission and staff spent considerable time and effort identifying public officials and employees needing to be added or removed from the roles of required filers. This was an ongoing process throughout FY2005.

For additional information, contact:

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